

# **COMMONWEALTH of VIRGINIA**

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr. Secretary of Natural Resources TIDEWATER REGIONAL OFFICE
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Robert G. Burnley Director

Francis L. Daniel Regional Director

# STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO TOHATSU INTERNATIONAL INC., of U.S.A.

# **Registration number 61136**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1307, §10.1-1316, and §10.1-1319 between the State Air Pollution Control Board and Tohatsu International Inc., of U.S.A., for the purpose of resolving certain violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

- 1. "Va. Code" means the Code of Virginia (1950), as amended.
- 2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
- 3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
- 4. "Director" means the Director of the Department of Environmental Quality.
- 5. "Tohatsu" means Tohatsu International Inc., of U.S.A., certified to do business in Virginia.
- 6. "Order" means this document, also known as a Consent Order.

- 7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
- 8. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).
- 9. "CFR" means Code of Federal Regulations.
- 10. "TCE" means trichloroethylene, a listed hazardous air pollutant.

# **SECTION C: Findings of Fact and Conclusions of Law**

- 1. Tohatsu International Inc., of U.S.A operates the facility located at 5878 Bayside Rd, Virginia Beach, VA 23455.
- 2. The Tohatsu facility has in use a Branson Model B3550R batch vapor solvent cleaning machine which uses TCE as the solvent. TCE use in batch vapor solvent cleaning machines is regulated 9 VAC 5-60-100 of the Regulations.
- 3. 9 VAC 5-60-100 of the Regulations incorporate by reference 40 CFR Part 63, § 63.460 through 63.469 (Subpart T) for TCE use in batch vapor solvent cleaning machines.
- 4. According to 40 CFR 63.468(f), each owner or operator of a batch vapor solvent cleaning machine using TCE shall submit an annual report by February 1 for the previous year indicating operator training of the solvent machine and an estimate of solvent consumption during the reporting period.
- 5. According to 40 CFR 63.468(h), each owner or operator of a batch vapor solvent cleaning machine using TCE shall submit an exceedance report semiannually, by July 30 and January 30. The exceedance report shall include results of monitoring, operator training, and an estimate of solvent consumption during the reporting period.
- 6. Tohatsu is required to submit to DEQ by February 1, 2004 an annual report with results of operator training and solvent consumption for the period January 1 to December 31, 2003 as required by 40 CFR 63.468(f). DEQ did not receive the annual report for the period of January 1 to December 31, 2003.
- 7. Tohatsu is required to submit to DEQ semiannual exceedance reports for the period January 1 to June 30, 2003 by July 30, 2003 and for the period July 1 to December 31, 2003 by January 30, 2004. These semiannual exceedance reports are required by 40 CFR 63.468(h) and are to include the results of monitoring, operator training, and an estimate of solvent consumption during the reporting

- periods. DEQ did not receive the semiannual exceedance reports due July 30, 2003 and January 30, 2004.
- 8. Tohatsu failed to comply with the Regulations by failing to submit an annual report as required by 40 CFR 63.468(f) for the period January 1 to December 31, 2003.
- 9. Tohatsu failed to comply with the Regulations by failing to submit semi-annual reports as required by 40 CFR 63.468(h) for the periods January 1 to June 30, 2003 and July 1 to December 31, 2003.
- 10. DEQ issued Tohatsu a Notice of Violation on June 2, 2004 for failing to submit an annual report and semiannual reports for reporting periods in 2003 as required by 40 CFR 63.468(f) and (h).
- 11. Tohatsu International Inc., of U.S.A. submitted to DEQ on August 10, 2004 the annual report for the period January 1 to December 31, 2003 and the semiannual reports for the periods January 1 to June 30 and July 1 to December 31, 2003 as required by 40 CFR 63.468(f) and (h).

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders Tohatsu International Inc., of U.S.A, and Tohatsu International Inc., of U.S.A voluntarily agrees, to pay a civil charge of \$1,200.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate Tohatsu International Inc., of U.S.A's Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

- 1. The Board may modify, rewrite, or amend the Order with the consent of the Tohatsu International Inc., of U.S.A, for good cause shown by the Tohatsu International Inc., of U.S.A, or on its own motion after notice and opportunity to be heard.
- 2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the Tohatsu International Inc., of U.S.A by DEQ on June 2, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law,

including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

- 3. For purposes of this Order and subsequent actions with respect to this Order, Tohatsu International Inc., of U.S.A admits the jurisdictional allegations and factual findings contained herein.
- 4. Tohatsu International Inc., of U.S.A consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
- 5. Tohatsu International Inc., of U.S.A declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
- 6. Failure by Tohatsu International Inc., of U.S.A to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations of this order. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
- 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
- 8. The Tohatsu International Inc., of U.S.A shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Tohatsu International Inc., of U.S.A shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tohatsu International Inc., of U.S.A shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Tohatsu International Inc., of U.S.A.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Tohatsu International Inc., of U.S.A. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tohatsu International Inc., of U.S.A from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Tohatsu International Inc., of U.S.A voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept 2, 2004.

Francis L. Daniel, Regional Director for Robert G. Burnley, Director Department of Environmental Quality

The Tohatsu International Inc., of U.S.A voluntarily agrees to the issuance of this Order.

Ву:	1 Xm
	Tsutomu Kojima, Vice-President
Date:	9-2-2004

Commonwealth of Virginia

City/County of Virginia REACH

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The foregoin	ng document was signed and ackn	owledged before me this 2 day of
September (mont	th)	(name), who is
Vice Pres (title)	of Tohatsu Internation	al Inc., of U.S.A, on behalf of the
corporation.	-	Deler L. Quaed  Notary Public
	My commission expires:	MARCH 31 2005